REMARKS/ARGUMENTS

A Petition for a Three-Month Extension of Time thereby extending the time for responding to the Official Action from August 12, 2006 to and including November 12, 2006 is submitted herewith.

A Request for Continued Examination (RCE) is also submitted herewith.

The present Amendment is in response to the Official Action mailed February 12, 2006. Claims 1-21 were rejected in the Action. Claims 1-4, 9-13, and 16-20 have been amended. Claim 21 has been canceled. Therefore, claims 1-20 are currently pending in the present application. Applicants set forth remarks relating to the Official Action below.

In the Action, the Examiner rejected claims 1, 13-15, and 18-21 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,997,432 to Keller ("*Keller*"). *Keller* is directed to a surgical instrument set having an implant and an inserter. The implant consists of two stop plates 3 and a sliding core 4. As shown in the figures of *Keller*, the two stop plates are circular, and the intervertebral inserter (*i.e.* spreading forceps 9) includes two curved prongs (*i.e.* two spreading jaws 10, 11) that mate with the stop or base plates of the implant. Because of the circular nature of the implant disclosed in *Keller*, there is no requirement that the inserter prevent rotation of the implant during insertion.

In the previous response filed on November 10, 2006, Applicants mistakenly referred to paragraph [0087] of the specification to provide support for the angled flat surfaces of the manipulation tool, referring to such surfaces as 420A, 420B, and 420C. In the present response, Applicants have corrected this mistake and have provided support for angled flat surfaces 4200a-f in paragraphs [0086] and [0089] of the specification.

In forming the § 102(b) rejection, the Examiner noted that the claims recite "surfaces" and "ends" which are arbitrary locations that do not define any specific sites, just relative positions. The Applicants respectfully disagree with the Examiner's contention and would like to point out, for instance, that the "angled distal surface" of the manipulation tool refers to the angled flat surfaces 4200a-f disposed on the distal end of the manipulation tool. These angled flat surfaces are discussed throughout the specification as, for instance, in paragraph [0086] and [0089] of the present application. In addition, a lengthy discussion regarding these angled flat surfaces is included in paragraph [0140]. In contrast to the Examiner's assertions, the Applicants are using terms for features explicitly defined in the specification and referenced in the drawing figures, for example, at least in Fig. 4cc.

Further, Applicants respectfully assert that amended independent claim 1 is unanticipated by *Keller* because the cited reference neither teaches nor suggests an intervertebral spacer device having "a first baseplate and a second baseplate, the first and second baseplate each including an upper surface, a lower surface, and an angled perimeter" and a manipulation tool having "a correspondingly angled distal surface" that engages "the angled perimeter of at least one of the baseplates," the manipulation tool further including "a spacer protruding outwardly from the angled distal surface, the spacer having an upper and lower surface wherein the first baseplate is lordodically angled with respect to the second baseplate as the lower surface of the first baseplate is held against the upper surface of the spacer."

As recited in amended claim 1, "rotation of the baseplates relative to the correspondingly angled distal surface of the manipulation tool is prevented by interference between

the angled perimeter of at least one of the baseplates and the correspondingly angled distal surface of the manipulation tool." As stated in Applicant's previous response, *Keller* at col.5, ll.57-62 teaches:

> "The holding instrument 23 has an essentially U-shaped holding element which consists of two legs 24, 25. The legs normally assume the rest position shown in Fig. 8, *in which the legs 24, 25 embrace the sliding core 4 only relatively loosely.*" (emphasis added)

In fact, the "relatively loosely" disclosure as outlined above in *Keller* teaches away from that of the teaching of the present invention. Specifically, paragraph [0089] of the specification teaches:

> "The wedge-shaped extension 4042 is designed and shaped to fit with its antero-lateral confronting surfaces (4200d, f and 4200a, c) *tight* against the corresponding antero-laterally facing surfaces (180d, f and 180a, c) of the disc 160,…" (emphasis added)

This does not comport with the implant designs taught in the respective references. *Keller* teaches a circular implant, which obviously does not require that such be inserted at a given orientation. The present invention, on the other hand, requires its specifically shaped implant to be inserted at a particular orientation. Applicants respectfully submit that this difference overcomes the § 102(b) rejections set forth by the Examiner.

Further, the manipulation tool of the present invention has additional structure not suggested or taught in *Keller*. As recited in amended claim 1, "the manipulation tool further including a spacer protruding outwardly from the angled

distal surface, the spacer having an upper surface and lower surface, wherein the first baseplate is lordodically angled with respect to the second baseplate as the lower surface of the first baseplate is held against the upper surface of the spacer." This added limitation even further defines the present invention over *Keller*.

In the Action, the Examiner asserted that it can be construed that the "grooves" in *Keller* form spacers between the plate surfaces since they form ledges to receive the plates. In fact, *Keller* teaches the spreading forceps 9 have two spreading jaws 10, 11 which are arranged in parallel and which can be spread apart from each other by a scissor-like articulation 12 with the aid of levers 13, 14 in such a way that their *surfaces remain parallel*. *See* col.5, ll.3-7. The spreading forceps 9 are designed in this manner so that during the spreading procedure the stop plates 3 are moved apart from each other in such a way that their surfaces touching the vertebral bodies remain parallel. *See* col.2, ll.42-46. In contrast, as shown in Fig. 4kk of the present invention, the first baseplate is lordodically angled with respect to the second baseplate as the lower surface of the first baseplate is held against the upper surface of the spacer. As such, amended sole independent claim 1 is far different from *Keller*.

For the foregoing reasons, *Keller* cannot be used to anticipate amended claim 1. Claims 2-20, some of which have been amended for clarity purposes, are unanticipated, *inter alia*, by virtue of their dependence from claim 1. A dependent claim is necessarily narrower than an independent claim from which it properly depends.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is

respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' agent at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 502615 therefor.

Dated: August 9, 2007

Respectfully submitted,

By 

William A. Di Bianca
Registration No.: 58,653
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Agent for Applicants

787961_1.DOC